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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,156	11/06/2000	Vivian A. Schramm		8663
52966	7590	05/24/2006		
MICHAEL R. SCHRAMM 350 WEST 2000 SOUTH PERRY, UT 84302			EXAMINER WEINSTEIN, STEVEN L	
			ART UNIT 1761	PAPER NUMBER
DATE MAILED: 05/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/707,156

Applicant(s)

SCHRAMM ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The rejections set forth in the last Office action are maintained and the full text is repeated below for applicants' convenience.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174) Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), in view of Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the various exhibits labeled A-K, Baker (WO 00/19803), Coleman ('884), and Hoeting et al ('870).

The claims are also rejected using Product Alert (3/23/98) as the primary reference. That is, claims 1-14 and 21-35 are rejected under 35USC103(a) as being unpatentable over Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the various exhibits labeled A-K, Baker (WO 00/19803), Coleman ('884), and Hoeting et al ('870), in view of Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174) Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs

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('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164).

In regard to the first rejection, employing Price as the primary reference, in regard to claim 1, Price discloses it was conventional to provide a container for inhibiting the spillage of contents of said container wherein the container defines an inner cavity and a funnel extending into said inner cavity to provide communication between said cavity and the exterior of said container, and wherein said container removably contains a flowable food substance. Hunter, Williams, Schramm, Martindale, Kennedy, Beutlich et al, McCombs, Meth, Patterson, Corteggiani, Pilot Ink and McCaffery are relied on as further evidence that it was notoriously old in the art to provide a container with a funnel to solve the problem of preventing spilling from the container of either liquids or solids, and either edibles or inedibles, that are contained within the container. This is precisely applicants problem as well. Note, for example, not only does Price teach a food in a funnel containing container to prevent spilling of the food, but so does Williams. Claim 1 differs from Price in view of the art taken as a whole in the particular contents of the container. Claim 1 recites some type of flowable candy. As noted above, the art taken as a whole fairly teaches that a funnel associated with a container can prevent the spillage of any flowable product whether it is a solid or liquid, or edible or inedible. Product Alert (3/23/98) as further evidenced by The Product Alert (8/9/99, parts 1 and 2), the exhibits, Baker, Coleman and Hoeting et al all teach that not only are applicants obviously not the first to provide a container with flowable candy, but like any other flowable material, the flowable candy would inherently be subject to spilling: See in this

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regard, CandyWarehouse and Hoeting et al. Note that, although the picture is admittedly of poor quality, there is no question that CandyWarehouse shows a container containing a flowable candy powder that is lying on its side with the powder emanating therefrom and a cover and hard candy attached thereto as described in Product Alert (3/23/98). To therefore modify Price in view of the art taken as a whole and substitute one conventional spillable, flowable material for another conventional spillable, flowable material, and one that is edible as well, is seen to have been obvious in view of the art taken as a whole. In regard to claim 3, as evidenced by the art taken as a whole, the funnel would inherently inhibit spillage when the container is oriented in any position. In regard to claim 4, the claim differs from Price in the recitation of a lollipop within the container. It is noted in this regard that applicant is not the first to associate a second dipable edible with a first edible that is contained within a funnel containing container as evidenced by Price, but applicants are also not the first to associate a lollipop with a flowable candy in a container as evidenced by Product Alert (3/23/98) and the further evidentiary material. To modify the combination and add the appropriate second edible that is compatible with the first edible (in this case a lollipop with a flowable candy) for its art recognized and applicants intended function would therefore have been obvious. In regard to claim 5, Product Alert (3/23/98/) as further evidenced by the evidentiary material teaches the association of a lollipop to a holder that is sealingly engagable with the container is well established in the art and to modify the combination and provide the container with an engagable holder for its art recognized and applicants intended function would therefore have been obvious.

Claims 8-14 and 21-25 are rejected for the reasons given above.

In regard to the rejection employing Product Alert (3/23/98) as the primary reference, Product Alert as further evidenced by the evidentiary material teaches it is conventional in the art to provide a flowable candy in a container and that inherently a flowable material is subject to spilling from the container. Claim 1 differs from the combination in the provision of a funnel to inhibit spilling. As evidenced by Price and the other secondary art, it is notoriously old in the art to provide funnels for containers of all types; holding all types of flowable materials both solids and liquids, both edible and inedible, so that the funnels prevent spillage of the flowable contents. To modify Product Alert (3/23/98) and provide a funnel for its art recognized and applicants intended function, for a product known to be spillable, would have been unequivocally obvious.

Claims 1-14 and 21-25 are rejected under the judicially created doctrine of obviousness double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 5,246,046 and claims 1-11 of RE 36131, in view of Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174) Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), in view of Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the various exhibits labeled A-K, Baker (WO 00/19803), Coleman ('884), and Hoeting et al ('870).

Claims 1-14 and 21-25 of the present application differ from the claims of 5,246,046 and Re 36,131 in the recitation that the funnel containing container holds a

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flowable candy. For the reasons fully and clearly detailed above, it would have been obvious in view of the art taken as a whole to modify the funnel containing containers of 5,246,046 and RE36,131 and employ flowable candy and a lollipop associated with a holder.

Claims 1-14 and 21-25 are rejected under the judicially created doctrine of obviousness double patenting as being unpatentable over claims 1-29 of U.S. Patent No.6,386,138 in view of Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174) Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), in view of Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the various exhibits labeled A-K, Baker (WO 00/19803), Coleman ('884), and Hoeting et al ('870).

For the reasons fully and clearly detailed above, it would have been obvious in view of the art taken as a whole to modify the funnel containing container claims of 6,386,138 and substitute one conventional work piece for another conventional work piece wherein the container contents are subject to spilling.

Claims 1-4 and 21-25 are rejected under 35USC102(e)/103 in view of Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174) Schramm (6,386,138), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), in view of Product Alert (3/23/98), as further evidenced by Product

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Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the various exhibits labeled A-K, Baker (WO 00/19803), Coleman ('884), and Hoeting et al ('870) or Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the various exhibits labeled A-K, Baker (WO 00/19803), Coleman ('884), and Hoeting et al ('870), in view of Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174) Schramm (6,386,138), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), for the reasons fully and clearly detailed above.

Claims 1-14 are rejected under 35USC112, first paragraph for the reasons given in the Office action mailed 6/9/05.

Thus, with the addition of Price, any urging that it was not known to employ a spill inhibiting funnel containing container with a flowable first edible product in the container, and a second edible, which can be inserted through the funnel and into the first edible, so that the second edible could then be pulled out of the container with some of the first edible associated therewith and without spilling the first edible, is rendered moot.

Similarly, with the addition of Product Alert (3/23/98), any urging that it was not known to associate a lollipop with a holder/container closure which fits onto a container containing a flowable candy is also rendered moot. In regard to Product Alert (3/23/98), this product, whether called Punker Pops or Muecas, has been on sale in Mexico at least since 3/23/98. The various exhibits that are part of the rejection are supplied to further

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show the details of this product, which product has remained unchanged from the date of the article.

All of applicants remarks filed 3/9/06 have been fully and carefully considered but are not found to be convincing. On page 2 of the response it is urged that CandyWarehouse should not be considered as prior art because it has a date after applicants filing date. As noted in the last Office action, CandyWarehouse shows a photograph of the product described in Product Alert (3/23/98), which is a flowable candy in a container (and a second non-flowable candy secured to a candy holder/cover). CandyWarehouse therefore is only being relied on to evidence the basic inherency that a flowable product, and a candy flowable product in particular, will be spillable from a flowable, candy containing container. As such, a reference is properly usable even if its date is after the filing date of the application. Of course, even without CandyWarehouse, and due to the Laws of Gravity, a candy product or any flowable product, such as the products of Price, Product Alert, etc. will inherently spill from its container if the container is tilted sufficiently. Applicants' basic urging boils down to the urging that the teachings of the references are "far removed" from that of the invention. This urging is totally unconvincing. It is urging that food is not candy, which appears to be an urging of nonanalogous art. The references which teach funnel containing containers are all analogous since they are all directed to the problem of preventing spilling of flowable products, both edible and inedible. Therefore, the art taken as a whole fairly teaches one of ordinary skill in the art that it would have been obvious to employ a funnel containing container if one wanted to prevent the spilling of any

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flowable product, edible or inedible. An invention must be novel and unobvious.

Whereas no one reference of record teaches both a conventional flowable candy and a conventional funnel containing, spill proof container together, so that the claims are novel, the preponderance of the evidence clearly and unequivocally teaches it would have been obvious to combine a conventional flowable candy and a conventional funnel containing, spill proof container for its art recognized and applicants intended function. Thus, an urging that states food and candy are not analogous does not address the art taken as a whole under 35USC103. It is urged that the solution to the problem of spillage solves a long felt need. However, the solution to the problem is to provide a funnel containing container which has long been used to mitigate or eliminate the problem of spillage of spillage material.

The remainder of the remarks have all been fully and carefully considered but are seen to be restatements of previous urgings made earlier in the response or made in earlier responses, which urgings have been addressed above or in previous Office actions, or urgings are not relevant to the current rejection. For example, Coleman and/or Hoeting are longer employed as primary references. Also, as discussed above, patentability determinations are based on what the art (all of the art) taken as a whole would have taught one of ordinary skill in the art at the time of applicants invention.

In summary, applicants have combined a conventional container structure, conventionally employed to address applicants problem of spillage from the container, and substitutes one flowable, conventional product for another flowable, conventional product, which would have been known to have had a problem of potentially spilling by

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anyone before or after Isaac Newton, and the combination of such conventional container and conventional product achieves no new or unexpected result – just the expected result of reducing or eliminating spillage from the container. The two rejections state that either 1) having a preponderance of evidence of funnel containing containers to prevent spillage of flowable products, it would have been unequivocally obvious to use such container structure for any conventional, flowable product such as the recited candy, or 2) having conventional, flowable candy in a conventional container including a closure with a second candy attached thereto, it would have been unequivocally obvious to provide the conventional container with a conventional funnel structure to prevent spillage in view of the preponderance of the evidence which teaches that such a structure for applicants intended use is notoriously conventional. Note that it is perfectly proper for secondary references to teach both the problem and its solution.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday -Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
5/19/06